

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

**IN THE MATTER OF: BID PROTEST
BIRCHWOOD RENOVATION
STATE PROJECT N12-9530-RC-D
M. A. ROZBITSKY CONSTRUCTION CO.
vs.
SOUTH CAROLINA DEPARTMENT
OF JUVENILE JUSTICE**

WRITTEN DETERMINATION

POSTING DATE: November 24, 2003

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from M. A. Rozbitsky Construction Company ("MAR") under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code ("Code"), for an administrative review on the proposed award of a construction contract for the Birchwood Renovation Project (the "Project") for the South Carolina Department of Juvenile Justice ("DJJ"). Pursuant to §11-35-4210(7) of the Code, further proceedings with the award were automatically stayed. In response to the stay, and in advance of a decision on the merits of the protest, DJJ petitioned the CPOC, pursuant to §11-35-4210(7) of the Code, to determine that prompt award of the contract is necessary to protect the best interests of the State. A copy of that petition is appended to and is hereby made a part of this determination. In addition the CPOC met with the project management staff of DJJ to elicit further details regarding the nature of the Project and the need to proceed.

The fundamental duty of the CPOC is to the fair and equitable administration of the State's construction procurement process, giving due consideration to the interests of all parties, including those not directly involved in the solicitation. Requests under §11-35-4210(7) are seldom granted and only if there is a compelling need. After careful review of the nature and circumstances of the Project, it is the determination of the CPOC that it is in the best interests of the State to grant DJJ's request. The basis for this determination is set forth in the discussion following.

DISCUSSION

DJJ states that the Project is the initial step in a multi-step sequence of several construction and renovation projects whose ultimate intent is to: (1) provide modern locations of appropriately secure housing for both male and female inmates; (2) remove recently-identified friable asbestos

from existing facilities; (4) to provide for improved safety and security in the buildings; and, (4) reduce agency operating costs by some \$4,000 per day. DJJ further states that this project, in a slightly different form, was conceived several years ago as part of the response to a Federal lawsuit, but could not be implemented due to overcrowding in DJJ facilities (which the CPOC understands was a principal basis for the lawsuit). With the passage of time the overcrowding condition has been alleviated and DJJ has the opportunity to complete the project as part of a final resolution of the Federal lawsuit. DJJ's staff noted that its current inmate population is cyclical and the winter months are a period of low occupant count, which allows them to initiate the renovation at this time. DJJ argued that to delay the current solicitation would potentially result in a project extension through the summer in order to provide for safe and secure housing in accordance with the commitments made under the lawsuit's resolution agreements.

DECISION

It is the decision of the Chief Procurement Officer for Construction that the stay on further procurement actions imposed by §11-35-4210(7) shall be lifted. The South Carolina Department of Juvenile Justice may proceed without further delay to execute the contract for the construction of the Birchwood Renovation Project.

A handwritten signature in black ink that reads "Michael M. Thomas". The signature is written in a cursive style with a horizontal line underneath it.

Michael M. Thomas
Chief Procurement Officer
for Construction

November 24, 2003
Date

STATEMENT OF THE RIGHT TO APPEAL

This written Determination is issued under Section 11-35-4210(7) of the South Carolina Procurement Code, which states, under Section 11-35-4410, subsection (1)(b):

(1) Creation. There is hereby created The South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine *de novo*:

...

(b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determination, decisions, policies, and procedures.

Additional information regarding the protest process is available on the internet at the following web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>

NOTE: Pursuant to Proviso 66.1 of the 2002 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel [filed after June 30, 2002] shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2002 S.C. Act No. 289, Part IB, § 66.1 (emphasis added). PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."



**South Carolina
Department of
Juvenile Justice**

Bill Byars, Director



P.O. Box 21069
Columbia, SC 29221-1069
www.state.sc.us/djj

Mark Sanford
Governor
State of South Carolina

November 19, 2003

Mr. Michael M. Thomas, PE, CBO
Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Project # N12-9530-RC-D
Birchwood Renovations

Dear Mr. Thomas:

DJJ urgently petitions for release from the protest lien so that we may proceed with the renovation on a timely basis. The importance and urgency of this project is magnified by concerns for safety and security as well as budgetary and lawsuit issues. Since the Department's juvenile population is currently reduced, we have a unique window of opportunity to accomplish these renovations. This reduced population allows DJJ to vacate an additional dormitory, which can be used to house juveniles as the Birchwood Dormitories are being renovated.

DJJ has been under court supervision and the restrictions of a lawsuit since 1995. The expeditious conclusion to this protest will allow the project to proceed and will allow DJJ to continue to comply with various orders and agreements in the Alexander vs. Byars federal lawsuit. In an effort to comply with the lawsuit, DJJ has developed regional evaluation centers, closed the Old R&E Campus, reduced the general overcrowding, increased staff training, increased the officer to juvenile ratio, improved food service quality, improved medical services and implemented numerous program improvements. We have also committed to renovate the Birchwood dormitories to enhance safety and security.

The renovation will replace sheetrock ceilings, which have caused safety and security problems since their initial construction in 1978. Over the years the juveniles have taken advantage of these soft ceilings in planning and implementing escapes. We have recently become aware that the floor tiles as well as the ceilings contain asbestos. Each time the juveniles damage the ceiling, as a part of an escape attempt or general vandalism, it exposes the DJJ staff as well as the juveniles to asbestos. The renovations will abate the asbestos and harden the ceilings enhancing both the safety and security of the occupants. Any delay will continue to place juveniles and staff at

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Michael M. Thomas
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risk. The renovation will also result in new fire alarm systems and a new security camera system to further enhance safety and security.

The budget crunch, which all state agencies are experiencing, is mandating the consolidation of certain DJJ facilities. The Birchwood Dormitory renovations are a vital link in a chain of events, which must take place in order for DJJ to consolidate its operations on Broad River Road. The attached schedule shows the renovation activity to be a critical activity starting the first of December and continuing for the next nine months. As this activity is taking place, a series of moves and program developments are also occurring in concert with the renovations. The end result is the closing of one DJJ facility. Any delay in the time line as outlined in the schedule will result in a cost to DJJ of approximately \$4,000 per day and threaten DJJ's ability to comply with lawsuit agreements within expected budgetary constraints.

Sincerely,

A handwritten signature in black ink, appearing to read "WR Byars, Jr.", with a stylized flourish at the end.

William R. Byars, Jr.
Director

WRB/be

Attachment – 1
1. Timeline

BRRC Renovation Plan

[illegible]

Legend

Contractor Award & Construction
Movement of Juveniles
DJJ Support Services Activities
Treatment & P&P